

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 2:17-cr-20186

HONORABLE STEPHEN J. MURPHY, III

DENNIS LEE DAVIS,

Defendant.

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OPINION AND ORDER
DENYING MOTION FOR COMPASSIONATE RELEASE [20]

Defendant Dennis Lee Davis recently moved for compassionate release. ECF 20. The Court ordered the Government to respond, ECF 21, and it did, ECF 22.

Under the First Step Act's compassionate release provision, the Court may modify Defendant's sentence only if: (1) he has exhausted all administrative remedies, or (2) thirty days have passed since the warden received Defendant's request for the Bureau of Prisons to bring a motion on his behalf. 18 U.S.C. § 3582(c)(1)(A). The exhaustion condition is "mandatory." *United States v. Alam*, 960 F.3d 831, 833–34 (6th Cir. 2020) (alteration in original) (quoting 18 U.S.C. § 3582(c)(1)(A)). Plus, it is Defendant's burden to establish that he has exhausted all his administrative remedies. *See United States v. Pena-Lora*, No. 15-20695, 2020 WL 3886384, at *1 (E.D. Mich. July 9, 2020) (citation omitted).

In the motion for compassionate release, Defendant explained that he did not need to exhaust his administrative remedies because the Court should create an

exception under "such extraordinary and life threatening circumstances[.]" ECF 20, PgID 89. To support that claim, Defendant cited a case from the Southern District of New York. *Id.* But in the Sixth Circuit, exhaustion is "mandatory[.]" *Alam*, 960 F.3d at 833–34, and that holding is binding, *Wright v. Spaulding*, 939 F.3d 695, 700 (6th Cir. 2019). Because Defendant admitted that he had failed to exhaust his administrative remedies, the Court will deny the motion for compassionate release without prejudice. Defendant may refile the motion after he has satisfied either condition of § 3582(c)(1)(A).

WHEREFORE, it is hereby **ORDERED** that the motion for compassionate release [20] is **DENIED WITHOUT PREJUDICE**.

SO ORDERED.

s/ Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: February 18, 2021

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on February 18, 2021, by electronic and/or ordinary mail.

s/ David P. Parker
Case Manager